1999

Dan F. Lee v. Dora Sanders, aka Dora Branin, and John Does 1-10 : Brief of Appellant

Utah Court of Appeals

IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

DAN F. LEE,

[redacted],

v.

DORA SANDERS, aka DORA BRANIN,
and JOHN DOES 1-10

Civil No. 9904-03528

[redacted],

_____/

IN THE UTAH COURT OF APPEALS

Case No. 20000945-CA

BRIEF OF APPELLANT

APPEAL

APPEAL FROM FOURTH DISTRICT COURT, UTAH COUNTY

JUDGE

Ralph C. Amott (#0068)
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1149 West Center Street
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Argument priority classification from Utah R. App. P.29(b)(15)

IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

DAN F. LEE,

Plaintiff,

v.

DORA SANDERS, aka DORA BRANIN,
and JOHN DOES 1-10, Civil No. 9904-03528

Defendant.
_____/

IN THE UTAH COURT OF APPEALS

Case No. 20000945-CA

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APPEAL FROM FOURTH DISTRICT COURT, UTAH COUNTY

JUDGE

Ralph C. Amott (#0068)
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TABLE OF AUTHORITIES

CASES:

STATUTES:

None

OTHER AUTHORITIES:

JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Section 78-2a-3(2)(i) of the Utah Code.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did the trial court improperly apply the law by determining home equity value when the matter was neither pleaded nor supported by evidence at trial.

The standard of appellate review is correction of error, Orton v. Carter, 970 P.2d 1254, (Utah 1998).

II. Did the trial court abuse its discretion when it used and arbitrary, capricious and invalid method for determining home equity value resulting in an unfair award to defendant.

The standard of appellate review is abuse of discretion, (Crookston v. Fire Ins. Exch., 860 P.2d 937 (Utah 1993).

CONSTITUTIONAL PROVISIONS, STATUTES, ETC.

None.

STATEMENT OF THE CASE

1. Plaintiff's Complaint, filed on or about September 29, 1999, sought the Court's determination of the parties' interest in a residence upon real property on three (3) separate bases: (a) dissolution of partnership and determination of partnership share; (b) quiet title on the basis on adverse possession; and (c) that defendant had no interest in said property and her name was on the Deed solely as an accommodation to plaintiff. (Record at pages 1-6).

2. Defendant answered, admitted that the parties were in a partnership with respect to the real property and requested the Court to order the property sold and the equity divided equally between the parties. (Record at pages 7-8).

3. A trial on the issues was held on June 6, 2000, and the Court entered Findings, Conclusions of Law and Judgment and Order Quieting Title July 31, 2000. (Record at pages 52-56).

4. Defendant filed a Motion to Amend Judgment August 9, 2000. (Record at pages 57-58).

5. The Court issued an Order on defendant's Motion denying the same October 12, 2000. (Record at pages 77-78).

6. Defendant filed her Notice of Appeal October 19, 2000, from a final Order entered in the Fourth District Court, Utah County. (Record at pages 81-82).

STATEMENT OF FACTS

a. Plaintiff and defendant began living together in August of 1993 and lived together until October of 1996, at which time they separated. (Record at page 56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 1).

b. At first the parties lived with plaintiff's mother, but then in September of 1994, plaintiff and defendant signed as borrower and co-borrower for the purchase of the home located in American Fork, Utah, and lived together in this home until their separation. (Record at page 56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 1).

c. The parties did not hold themselves out as husband and wife. (Record at page 56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 1).

d. The loan application for the purchase of the American Fork home indicated that the parties intended to purchase the property as joint tenants while listing themselves as unmarried persons. (Record at pages 55-56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 2).

e. The parties took title to the property in their separate names as joint tenants. (Record at pages 55-56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 2).

f. The total purchase price for the property was $58,395.26 and $6,995.26 was paid as a down payment leaving a total balance due of $51,296.75 (sic). (Record at pages 55-56, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 2).

g. From the time of purchase of the property in September, 1994, until the end of October, 1996, the parties lived in the home together, pooling their incomes during the time that each was employed for the benefit of each other, and paying the monthly mortgage on the home, either from funds contained in a joint bank account or from defendant's separate bank account. (Record at page 55, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 3).

h. Plaintiff and defendant, for purposes of purchasing the property in question, held themselves out as joint tenants. (Record at page 55, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 4).

i. The beginning loan balance due for the property was $51,296.75, and the balance owing on said loan as of October 31, 1996, the date of separation, was $50,135.78. The difference between the purchase price and the price at the time defendant left would be the equity established by payments made. (Record at pages 55 and unnumbered page, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 5).

j. Neither party presented any evidence for the Court to consider with respect to appreciation and value of the property from the time of purchase to October 31, 1996, the time of separation, nor from the time of purchase to the time of trial. Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 5).

k. After the separation of the parties the plaintiff continued to reside in the home and pay the monthly mortgage payments, taxes and insurance. No monies were paid by the defendant from October 31, 1996, to the time of trial. Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 7).

l. The 1999 County Property Valuation notice submitted as Exhibit 12 showed a current valuation of $80,157.00. (Record at page unnumbered).

m. The purchase price of the property was $51,296.75 as of September 14, 1994, and as of October 31, 1996, the time of separation of the parties, there was $50,135.78 due and owing on the property. (Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 8).

n. Equity in the property was determined by subtracting the mortgage balance on the date the parties separated from the original purchase price. (Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 6).

o. Each of the parties should be awarded one-half of the equity in the property. (Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 9).

p. The equity established in the property by evidence is $1,160.97, and defendant is entitled to $580.48 plus interest as her equity in the property. (Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraphs 8 and 10).

q. Title to the property is quieted in plaintiff's name against the defendant. (Record at page unnumbered, Findings, Conclusions of Law, and Judgment and Order Quieting Title, paragraph 11).

SUMMARY OF ARGUMENT

1. It was improper for the trial court to determine the amount of the home's equity because that matter was not pleaded and neither party presented evidence sufficient to establish that matter.

2. The trial court abused its discretion in determining the home's equity value when it used an arbitrary, capricious and invalid method. Because determination of equity in real property requires evidence of its fair market value, when such evidence is not presented, the trial court cannot create its own formula.

ARGUMENT

I. IT WAS IMPROPER FOR THE TRIAL COURT TO DETERMINE THE AMOUNT OF THE HOME'S EQUITY:

Plaintiff's Complaint asks the trial court to declare him the sole owner of the home owned in joint tenancy by the parties or, to determine what share each of the parties did own. Defendant's Answer also asks the trial court to determine the percentage of ownership owned by each of the parties. The trial court heard testimony and took evidence of the understanding, intent and actions of the parties with respect to ownership and determined that each owned half and was entitled to one-half of the equity therein. This part of the trial court's decision is not disputed on appeal.

"Neither party presented any evidence for the Court to consider with respect to appreciation in value of the property from the time of purchase to October 31, 1996, the time of separation, nor from the time of purchase to time of trial." (Findings, Conclusions of Law and Judgment and Order Quieting Title at paragraph 5 pages 55 and unnumbered page of the record). In fact, neither party attempted to establish the home's fair market value at trial and neither party asked the trial court to award him/her a dollar amount for his/her share. Each of the parties was only asking the trial court to establish the percent share of ownership that each owned.

It is improper for a trial court to make a ruling on a matter not pleaded and where the evidence is insufficient to establish that matter. In re: Behm's Estate, 213 P.2d 657, 663 (Utah 1950). Because the trial court had no evidence to support a finding concerning the amount of the home's equity and because neither of the parties requested such a finding in

their pleadings or at trial, the trial court, as in the Behm's Estate case, was barred from making findings and conclusions on the matter of either fair market value or home equity. This portion of the judgment must be reversed.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING THE HOME'S EQUITY VALUE:

With respect to real estate, equity is the difference between the fair market value of a property and the debt against that property. (See Black's Law Dictionary, 5th Ed.). Although the trial court had evidence as to the debt that existed against the property three year's prior to the date of trial, it had no evidence as to the debt against the property as of the date of trial nor did it have any evidence of the property's fair market value. Rather than requiring the parties to produce or submit evidence of the property's fair market value or otherwise fashioning a remedy that would establish equity, the trial court created its own method of determining the home's equity. It used the mortgage balance as of the date of purchase and the mortgage balance as of the date of the parties' separation, neither of which is a measure of fair market value. This method of calculating home equity is arbitrary, capricious and an invalid formula for calculating home equity.

Where there is inadequate evidence to apply a standard means and method of determining property value, the trial court should use proper discretion in devising how to bring the necessary evidence before it or otherwise divide the subject property rather than creating its own definition and formula. In the case of Munns v. Munns, 790 P.2d 116 (Utah App. 1990), when the trial court concluded that it did not have appropriate property values and that the valuation evidence was inadequate, it continued the hearing for presentation of

further appraisal information. In the case of Berger v. Berger, 713 P.2d 695, 698 (Utah 1985) the trial court utilized inconclusive and improper evidence of a property's value. The Supreme Court concluded that the trial court had no admissible evidence as to the value of the property and remanded the case for a new trial to determine said property's value.

The trial court in the present case, knowing that it had inadequate evidence of the property's value, had several options within its proper discretion. It could have (1) ordered the property sold and its net proceeds divided half to each party; (2) ordered that the parties hire one or more appraisers to value the property and allowed plaintiff to purchase defendant's one-half share if he did not want to sell the property; and (3) continued the trial and ordered the parties to stipulate or submit evidence of the property's value. Any of these approaches would have been fair and reasonable and would not have produced the inequitable outcome for defendant that has resulted from the trial court's improper determination of equity.

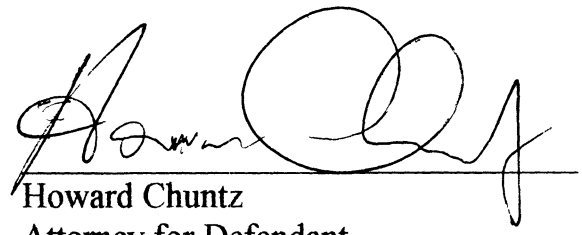
The trial court knew that the property had appreciated in value and that it was no longer worth what the parties had originally paid for it because Exhibit "12" admitted at trial showed that the county valued the property at $80,157.00 in 1999. (This Exhibit was not before the court to establish the exact fair market value of the property but the court did have the Exhibit and the valuation of the property before it). There was no reasonable basis for the court to utilize the method of determining the home's equity as it did.

CONCLUSION

As a result of the improper finding and conclusion regarding the home's equity and the abuse of discretion in how that home equity value was determined, appellant requests this

Court to reverse the trial court's order granting her judgment against the plaintiff for the sum of $580.48 plus interest as representing her equity interest in the home and to remand the determination of home equity value to the trial court and require said court to make its determination on the basis of either appraisal or sale of the property.

DATED May 21, 2001.

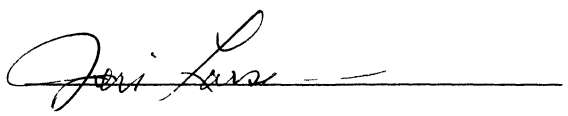


Howard Chuntz
Attorney for Defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 25th day of May, 2001, to the following:

Ralph C. Amott
Attorney for Plaintiff
60 East 100 South, Ste. 102
Provo, UT 84606



ADDENDUM

RALPH C. AMOTT, (#0068)
DONALD D. GILBERT (#6733)
Attorneys for Plaintiff
60 E 100 So., STE 102
PROVO UT 84606
Telephone: (801) 377-6575

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH
125 NORTH 100 WEST, PROVO, UTAH 84601

DAN F. LEE, Plaintiff, vs. DORA SANDERS aka DORA BRANIN, [redacted], and John Does 1-10, Defendants.	COMPLAINT DIVISION # 7 **Civil No.99-**0403528

COMES NOW plaintiff and complains of Defendants, and for cause of action alleges as follows:

FIRST CAUSE OF ACTION
(Equitable dissolution and division of partnership property and/or judgment for contribution and payments of Plaintiff)

1. That Plaintiff and Defendant are residents of Utah County, State of Utah.

2. That the property that is the subject of this lawsuit is located in the City of American Fork, County of Utah, State of Utah and is more particularly described as follows:

COMMENCING 132.0 FEET WEST OF THE SOUTHEAST CORNER OF

BLOCK 10, PLAT A, OF THE AMERICAN FORK CITY SURVEY OF BUILDING LOTS; THENCE NORTH 107.0 FEET; THENCE WEST 95.5 FEET; THENCE NORTH 25.0 FEET; THENCE WEST 20.0 FEET; THENCE SOUTH 132.0 FEET TO THE NORTH LINE OF 100 SOUTH STREET; THENCE EAST 115.5 FEET TO THE PLACE OF BEGINNING. AREA: 0.30 ACRES.

3. In 1994, Plaintiff and Defendant entered into a partnership by becoming record owners of the subject property described above as unmarried individuals.

4. Plaintiff and Defendant cohabitated at the subject property from 1994 to November 1996.

5. In November 1996, Defendant abandoned Plaintiff and the property, left the state for a period of time, and married, having no further contact with Plaintiff or the property.

6. That Plaintiff has been paying the taxes, mortgage payments, costs of repair, maintenance and has made improvements on the subject property for each and every year since the acquisition in 1994 and resides there today.

7. At no time since the acquisition in 1994 has Defendant made any contributions, or only nominal ones, towards payment of the mortgage, costs of repair, maintenance, improvements, insurance or taxes on the subject property.

8. That Defendant has breached the partnership agreement by abandoning the premises and by failing to make contribution or reimbursing for the same and the partnership should therefore be dissolved and the property distributed to Plaintiff in its entirety.

9. That Plaintiff has sought to refinance the subject property but Defendant's name on the property is a cloud thereon preventing refinance or sale and Defendant has refused and ignored requests to remove her name or assign over title or even to make an

15. Plaintiff has had actual, continuous possession and made open, exclusive and notorious use of the property for the last three (3) years. Said use has been under claim of right and/or title, adverse and hostile to any interest that Defendant may assert in the property.

16. That based on Plaintiff's sole use of the property for many years, and Defendant's abandonment thereof, and her failure to contribute in any meaningful way to the purchase, maintenance, or upkeep of the property in question, and the fact that this is, and always was, simply what the parties considered a partnership or investment based on relative contribution to the purchase and upkeep of the property, and based on all other allegations heretofore set forth, that Plaintiff is entitled to an order Quieting Title to said property in Plaintiff, free and clear of any interest or claim of Defendant or any other person.

17. That Plaintiff is also entitled to an award of costs and reasonable attorney fees incurred in prosecuting this quiet title action.

THIRD CAUSE OF ACTION
(ACCOMODATION)

18. Plaintiff realleges all prior allegations set forth herein.

19. In the alternative, Plaintiff alleges that the taking of this property in Defendant's name jointly with Plaintiff, was done solely as an accomodation to Plaintiff by Defendant.

20. That defendant knew, or should have known, that she claimed no interest in this property and that her subsequent behavior after taking title jointly with Plaintiff attests to this understanding in that she made no contribution to the mortgage,

improvements, taxes or any other aspect of maintaining this home, that she abandoned the same after only a short time and has continuously abandoned it for many years.

21. That equitably Plaintiff is entitled to all equity that has accrued in this home since its purchase based on his sole contributions thereto, and the fact that Defendant's taking joint title with him was a mere accomodation and intended by the parties to endow no interest or claim on the property in Defendant.

22. That Plaintiff is entitled therefore to an order removing Defendant's name from this property and awarding it free and clear to Plaintiff, plus an award of costs and fees in incurred in prosecuting this action.

WHEREFORE, Plaintiff prays for judgment against Defendant Branin, and all other John Does as may be identified and added hereafter, as follows:

FIRST CAUSE OF ACTION:

1. For an order of this court dissolving the partnerhsip of the parties, to an accounting and determination of all partnership proceeds and contributions, and to an order determining the relative equitable value of each parties contribution to the investment property, which Plaintiff believes should be a finding of 100% interest in the property to Plaintiff and 0% to Defendant.

2. For an order of this court removing Defendant's name from the property and awarding free and clear title to him, or in the alternative granting Plaintiff a judgment against Defendant for all contributions, payments, improvements and such as he has made on this property, all as may be proven at trial.

3. For an order that Defendant, and all persons or John Does claiming interest with Defendant, have no estate, right, title, lien or interest in or to the property or any part thereof, and Plaintiff's interest is superior to all others.

4. For an award of costs and attorney fees incurred in prosecuting this action

SECOND CAUSE OF ACTION:

1. For an Order of this Court quieting title to the subject property in Plaintiff solely.

2. For an order that Defendant, and all persons or John Does claiming interest with Defendant, have no estate, right, title, lien or interest in or to the property or any part thereof, and Plaintiff's interest is superior to all others.

3. For an award of costs and attorney fees incurred in prosecuting this action

THIRD CAUSE OF ACTION:

1. For an Order of this court that Plaintiff is entitled to an order removing Defendant's name from this property as being solely an accomodation signer, and awarding it free and clear to Plaintiff, plus an award of costs and fees in incurred in prosecuting this action.

DATED this 21 day of September, 1999.

Ralph C.Amott,
Donald D. Gilbert,
Attorneys for Plaintiff

Howard Chuntz, No 4208
Attorney for Defendant
1149 West Center Street
Orem, UT 84057
Telephone: 801-222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

DAN F. LEE,

Plaintiff,

v.

DORA SANDERS aka DORA BRANIN, and JOHN DOES 1-10,

Defendant.

_____/

ANSWER

Case No. 990403528
Stott

COMES NOW defendant, Dora Sanders, by and through her attorney, Howard Chuntz, and answers the allegations set forth in plaintiff's Complaint as follows:

1. Defendant admits the allegations set forth in paragraphs 1, 2, 3 and 4 of plaintiff's Complaint.

2. Defendant denies the allegations set forth in paragraphs 6, 7, 8, 11, 13, 16, 17, 18, 19, 20, 21 and 22 of plaintiff's Complaint.

3. With respect to paragraph 5 of plaintiff's Complaint, defendant admits that she and plaintiff separated, that she began living separately from him, that she allowed him to remain in their home that is the subject of this litigation, that she left the State for a period of time and married, but denies that she abandoned the subject property.

4. With respect to paragraph 9 of plaintiff's Complaint, defendant admits that her name remains as an owner on said property and that the same may be preventing defendant from

refinancing or selling said property and that she has refused request to remove her name or assign over title of the property to plaintiff, but denies each and every other allegation set forth therein.

5. With respect to paragraph 10 of plaintiff's Complaint, defendant admits that any partnership that exists between the parties should be dissolved, that the subject property should be sold and that the equity derived therefrom should be divided between the parties. Defendant denies each and every other allegation set forth therein.

6. With respect to paragraph 12 of plaintiff's Complaint, defendant is without sufficient knowledge or information to form an opinion or belief, and, therefore, denies the same.

7. With respect to paragraph 15 of plaintiff's Complaint, defendant admits that plaintiff has had actual and continuance possession of the subject premises and has made open, exclusive and notorious use of said property for the last two plus years, but denies each and every other allegation set forth in said paragraph 15.

WHEREFORE, defendant prays that plaintiff take nothing by his Complaint, that the Court order that the property be sold and that the equity therein be divided equally between the parties and that defendant be awarded her costs and attorney's fees in defending this action.

DATED October 18, 1999.

Howard Chuntz
Attorney for Defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 27th day of October, 1999, to the following:

Ralph C. Amott
Donald D. Gilbert
Attorneys for Plaintiff
60 East 100 South, Ste. 102
Provo, UT 84606

re ans

RALPH C. AMOTT (#68)
Attorney for Plaintiff
60 East 100 South, Suite 102
Provo, Utah 84606
(801) 377-6575

JUL 31 4 27 PM '00

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH
125 NORTH 100 WEST, PROVO, UTAH 84601

DAN F. LEE, Plaintiff, vs. DORA SANDERS aka DORA BRANIN, and John Does 1-10, Defendants.	)	FINDINGS, CONCLUSIONS OF LAW, AND JUDGMENT and ORDER QUIETING TITLE **Civil No.9904-03528** Div 7

THIS MATTER CAME on regularly before this court for bench trial on June 6, 2000. Plaintiff was present in person and by and through his attorney's Ralph C.Amott and Donald D. Gilbert. Defendant was present in person and by and through her attorney Howard Chuntz. At issue were property claims arising from the joint purchase and maintenance of a home by Plaintiff and Defendant. The Court having received evidence and testimony and heard arguments in the case, and having reviewed the case law presented and all documentation on file with the Court, the Court makes the following Findings of Fact and Conclusions of Law:

1. The Court finds that Plaintiff (Dan Lee), and Defendant (Dora Sanders), began living together in August of 1993. The Parties lived together until October 1996 when defendant and Mr. Lee separated. During that intervening time period the Parties lived with Plaintiff's mother and in the home purchased by the parties, though they did not hold themselves out as husband and wife.

2. The Court finds that on September 14, 1994 Plaintiff and Defendant signed as borrower and co-borrower for the purchase of

the home located in American Fork. The loan application (ex. 22), indicated that the parties --listing themselves as unmarried persons-- intended to purchase the property as joint tenants. Exhibit 23, a copy of a document entitled "Settlement Statement," lists the parties as borrowers for the property in quesion. The settlement statement indicates that the purchase price of the property was $56,000+ costs,, totaling $58,395.26. The evidence (ex.23), in the case established that the parties made a down payment of $6,995.26, leaving a total balance due of $51,296.75. No part of the down payment was paid by the Defendant.

3. The Court finds from the time of purchase of the property in September 1994 until the end of October in 1996, the parties lived in the home together, pooling their incomes during the time that each was employed for the benefit of each other, and paying the monthly mortgage on the home, either from funds contained in a joint bank account or from Defendant's separate bank account.

4. The Court finds that regardless of what labels are put on the theory of recovery, as claimed in this case by the Parties, i.e., contract, partnership or quasi-marital relationship, the court finds that the Plaintiff and Defendant for purpose of purchasing the property in question held themselves out as joint tenants purchasing the property together. The Court finds the evidence (ex. 26 copies of Defendant's checks), established that many of the monthly mortgage payments were in excess of the required monthly amount. From the evidence presented, the regular monthly mortgage payment appears to be approximately $471.00 per month.

5. The Court finds that as per exhibit 23, the beginning balance of the amount due for the purchase of the property was $51,296.75. The evidence shows from ex. 16 that as of October 31, 1996, the balance due was $50,135.78. The difference between the purchase price and the price at the time Defendant left would be the equity established by payments made. Neither Party presented any evidence for the Court to consider with respect to

appreciation in value of the property from the time of purchase to October 31, 1996, the time of separation, nor from the time of purchase to the time of trial.

6. The Court finds the only way the Court has of determining any equity in the property that is subject to distribution is to determine the purchase price and compare it to the balance due on a specific date, namely the separation of the parties.

7. Based upon the evidence, the Court finds that after the time of separation the Plaintiff continued to reside in the home and pay the monthly mortgage payments, taxes, and insurance. No moneys were paid by the Defendant from October 31, 1996 to the time of trial.

8. From the evidence presented, the Court finds that as per exhibit 23 the purchase price of the property was $51,296.75 as of Setpember 14, 1994. The Court also finds that from exhibit 16, as of October 31, 1996, the time of separation of the Parties, $50,135.78 was due and owing on the property. Subtracting that amount from the original purchase price, the Court finds that the equity established in the property by the evidence is $1,160.97.

9. Considering the evidence, the Court finds that based upon principles of equity (Utah Code Ann. Sec. 30-2-6 (1999)), and partnership, the Parties, though unmarried (UCA Sec. 30-1-4.5), should share equally in the amount of equity found by the Court. Therefore, the Court divides the $1,160.97 equally.

10. Defendant is entitled to $580.48 plus interest as her equity in the property.

11. The Court finds that title is quieted to Plaintiff against the Defendant and that an order may be entered removing the Defendant's name from the property.

BASED ON THE FOREGOING FINDINGS AND CONCLUSIONS OF LAW, THE COURT DOES NOW MAKE THE FOLLOWING ORDER OF JUDGMENT AND QUIET TITLE:

1. Defendant is granted judgment against Plaintiff in the sum of $580.48 plus interest of 10% from October 1996 until paid in full, representing her equity interest in the home in American Fork.

2. Plaintiff is to pay the Defendant her interest as set forth in paragraph one immediately above on or before September 30, 2000. In the event the amount has not been paid by that date, the home shall be placed for sale with a real estate company and sold and Defendant paid her $580.48 plus interest from the proceeds of the sale.

3. The home and property in American Fork is hereby quieted in Plaintiff Dan Lee and by this order the name of Defendant Dora Sanders aka Dora Branin is hereby removed from the title to said property located at 22 West 100 South, American Fork, Utah, and more particularly described as follows:

> COMMENCING 132.0 FEET WEST OF THE SOUTHEAST CORNER OF BLOCK 10 PLAT "A", OF THE AMERICAN FORK CITY SURVEY OF BUILDING LOTS; THENCE NORTH 107.0 FEET; THENCE WEST 95.5 FEET; THENCE NORTH 25.0 FEET; THENCE WEST 20.0 FEET; THENCE SOUTH 132.0 FEET TO THE NORTH LINE OF 100 SOUTH STREET; THENCE EAST 115.5 FEET TO THE PLACE OF BEGINNING.

4. Each party shall bear their own attorney fees and costs in this matter.

Dated this 31 day of July, 2000.

BY THE COURT: ORIGINAL IF IN RED INK

DISTRICT JUDGE STONE

Approved as to Form:

Howard Chuntz, Atty. for Def.

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Findings, Conclusions of Law and Judgment and Order Quieting Title was mailed, postage prepaid, this 7 day of July, 2000, to the following:

Howard Chuntz, Attorney
1149 West Center
Orem, Utah, 84057

AUG 9 PM 5:17

Howard Chuntz, No. 4208
Attorney for Defendant
1149 West Center Street
Orem, UT 84057
Telephone: 801-222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

DAN F. LEE,

Plaintiff,

v.

DORA SANDERS aka DORA BRANIN, and JOHN DOES 1-10,

Defendant.

_____/

MOTION TO AMEND JUDGMENT

Case No. 9904-03528

Div 7

COMES NOW defendant in the above captioned matter, by and through her attorney, Howard Chuntz, and moves the Court, pursuant to Rule 59(e) of the Utah Rules of Civil Procedure, to amend its Judgment. This Motion is supported by the Memorandum of Points and Authorities submitted herewith.

DATED August 9, 2000.

Howard Chuntz
Attorney for Defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 9th day of August, 2000, to the following:

Ralph C. Amott
Donald D. Gilbert
Attorneys for Plaintiff
60 East 100 South, Ste. 102
Provo, UT 84606

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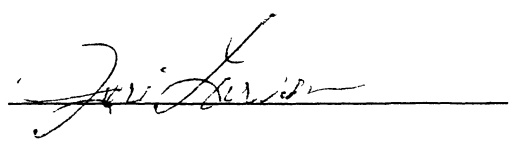

RALPH C. AMOTT (#68)
Attorney for Plaintiff
60 East 100 South, Suite 102
Provo, Utah 84606
(801) 377-6575

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH
125 NORTH 100 WEST, PROVO, UTAH 84601

DAN F. LEE, Plaintiff, vs. DORA SANDERS aka DORA BRANIN, and John Does 1-10, Defendants.	ORDER ON DEENDANT'S MOTION **Civil No.9904-03528** Div 7

THIS MATTER came on regularly before this court for ruling on Defendant's Motion to Amend Judgment. Plaintiff filed an Objection thereto. The court having reviewed all the pleadings before it, and duly considered the same, and having heretofore entered it's ruling dated Sept. 21, 2000, and good cause otherwise appearing; Now Therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The main issue raised in Defendant's Motion to Amend is that the court erred in determining the equity in the property and that the correct way to determine it is to subtract all debt and encumbrance balances from the property's actual or appraised value. Thus, Defendant argues that the Court should have either (1) ordered that the property be sold with Plaintiff having a right of first refusal, and the purchase price less the mortgage balance to be divided equally between the parties; or (2) order the parties to have the property appraised, and determine equity

as described above. The Court agrees that these methods are some options available to determine equity in real property. However, the Court believes, based on the evidence presented at trial, that the Court's determination of equity was appropriate.

2. By both parties admission, neither party presented evidence of the property's actual or appraised value at trial. However, both the plaintiff's Complaint and Defendant's Answer put at issue the value of the real property at issue in the lawsuit. Thus, both parties were on notice by reason of the pleadings that the value of the real property and its equity would be questions to be addresed at the time of trial.

Based upon the evidence presented by the parties at trial, a determination was made by the Court as to equity as stated in the Court's Ruling and above also. Therefore, in accordance with that evidence, the Court's determination was proper and equitable and will stand.

Defendant's Motion to Amend Judgment and Request for Oral Argument are therefore and hereby DENIED.

DATED this 17 day of October, 2000.

BY THE COURT:

District Judge Stott

MAILING CERTIFICATE

I CERTIFY that a true and correct copy of the foregoing Order on Defendant's Motion to Amend Judgment, was mailed, postage prepaid, this 28 day of Sept., 2000, to Howard Chuntz, Attorney for Defendant, at 1149 West Center, Orem, Utah, 84057.

Oct 20

Howard Chuntz, No. 4208
Attorney for Defendant
1149 West Center Street
Orem, UT 84057
Telephone: 801-222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT

COUNTY OF UTAH, STATE OF UTAH

DAN F. LEE,

Plaintiff,

v.

DORA SANDERS aka DORA BRANIN, and JOHN DOES 1-10,

Defendant.

NOTICE OF APPEAL

Case No. 9904-03528

Defendant, Dora Sanders, aka Dora Branin, hereby appeals to the Utah Court of Appeals from the Judgment and Order Quieting Title entered by the Honorable Gary D. Stott on July 31, 2000, from plaintiff's Complaint.

DATED October 10, 2000.

Howard Chuntz
Attorney for Defendant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 19th day of October, 2000, to the following:

Ralph C. Amott
Donald D. Gilbert
Attorneys for Plaintiff
60 East 100 South, Ste. 102
Provo, UT 84606

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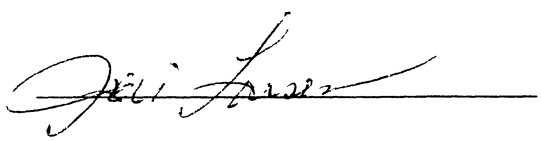

1999 PROPERTY VALUATION NOTICE

AUGUST 20, 1999

- THIS IS NOT A BILL - DO NOT PAY -

12

)PERTY IDENTIFICATION INFORMATION			PROPERTY LOCATION INFORMATION
ST	060 (C)	RS	COM. W 132 FT FR SE COR OF BLK 10, PLAT A, AMERICAN FORK CIT
#	02:023:0003	(001)	Y SURVEY; N 107 FT; W 95.5 FT; N 25 FT; W 20 FT; S 132 FT; E
#	C-158		115.5 FT TO BEG. AREA .30 ACRES.

LEE, DAN F ET AL
22 W 100 S
AMERICAN FORK UT 84003-2302

BOARD OF EQUALIZATION INFORMATION

IF YOU DISAGREE WITH THIS YEAR'S MARKET VALUE AND WANT TO FILE AN APPEAL, YOU MUST CALL 370-8228 BEFORE SEP 20 AT 5:00 P.M. AND PROVIDE THE SERIAL NUMBER OF THE PROPERTY WHOSE VALUE YOU WISH TO APPEAL. NO APPEALS WILL BE ALLOWED AFTER THIS DATE. AN APPLICATION WILL THEN BE SENT TO YOU. THE COMPLETED APPLICATION, TOGETHER WITH ALL DOCUMENTATION SUPPORTING THE VALUE YOU THINK IS APPROPRIATE MUST BE EITHER RECEIVED BY THE CLERK OF THE BOARD AT 100 E CENTER, SUITE 3600, PROVO, UT 84606, BEFORE THE HEARING, OR BROUGHT WITH YOU TO YOUR HEARING.

MARKET VALUE OF YOUR PROPERTY

PROPERTY TYPE	LAST YEARS MARKET VALUE	THIS YEARS MARKET VALUE
)ENTIAL	70,935	80,157
TOTAL PROPERTY VALUE	70,935	80,157

CURRENT AND PROPOSED PROPERTY TAXES

TAXING ENTITIES	TAX LAST YEAR	TAX THIS YEAR IF .		A PUBLIC BUDGET MEETING WILL BE HELD:
		NO CHANGE	PROPOSED BUDGET	
NE SCHOOL DIST (BASIC)	71.79	81.12	81.12	SEPT 14TH AT 7:00 PM
NE SCHOOL DIST (OTHER)	176.38	191.42	226.25	575 N. 100 E. AMER FRK
ICAN FORK CITY	94.53	99.33	99.33	
L ASSESSING	6.91	8.55	8.55	
I COUNTY ASSESSING	8.90	9.83	9.83	
COUNTY	49.47	53.17	53.17	
RAL UT WATER CONS DIST	15.49	17.63	17.63	
H UTAH CNTY WATER DIST	1.68	1.76	1.76	
NE SCHOOL DIST JDGMENT	1.91			
ICAN FORK CITY JDGMENT	1.83			
L ASSESSING JUDGEMENT	.35			
TOTAL PROPERTY TAX	429.23	462.82	497.65	PLEASE READ OTHER SIDE

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Constitution of the United States, Amendment VI, 1791.

76-6-405. Theft by deception

(1)A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.

(2)Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or worth in communications addressed to the public or to a class or group.

Utah Code
Title 76 Utah Criminal Code

76-6-501. Forgery-- "Writing" defined

(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a)alters any writing of another without his authority or utters any such altered writing; or

(b) makes, completes, eecutes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(2) As used in this section, "writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(b) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or

(c) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(d) Forgery is a felony of the third degree.

Utah Code
Title 76 Utah Criminal Code

77-32-101. Indigent Defense Act.

This chapter is known as the "Indigent Defense Act."

Utah Code
Title 77 Utah Code of Criminal Procedure

77-32-301. Minimum standards for defense of an indigent.

Each county, city, and town shall provide for the defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with the following minimum standards:

(1) provide counsel for each indigent who faces the substantial probability of the deprivation of the indigent's liberty;

(2) afford timely representation by competent legal counsel;

(3) provide the investigatory resources necessary for a complete defense;

(4) assure undivided loyalty of defense counsel to the client;

(5) proceed with a first appeal of right; and

(6) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

Renumbered and Amended by Chapter 354, 1997 General Session

Utah Code
Title 77 Utah Code of Criminal Procedure

77-32-302. Assignment of counsel on request of indigent or order of court.

(1) Legal counsel shall be assigned to represent each indigent and the indigent shall also be provided access to defense resources necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

(a) the indigent requests counsel or defense resources, or both; or

(b) the court on its own motion or otherwise orders counsel, defense resources, or both and the defendant does not affirmatively waive or reject on the record the opportunity to be represented and provided defense resources.

(2) (a) If a county responsible for providing indigent legal defense, including counsel and defense resources, has established a county legal defender's office and the court has received notice of the establishment of the office, the court shall assign to the county legal defender's office the responsibility to defend indigent defendants within the county and provide defense resources.

(b) If the county or municipality responsible to provide for the legal defense of an indigent, including defense resources and counsel, has arranged by contract to provide those services through a legal aid association, and the court has received notice or a copy of the contract, the court shall assign the legal aid association named in the contract to defend the indigent and provide defense resources.

(c) If the county or municipality responsible for providing indigent legal defense, including counsel and defense resources, has contracted to provide those services through individual attorneys, individual defense resources, or associations providing defense resources, and the court has received notice or a copy of the contracts, the court shall assign a contracting attorney as the legal counsel to represent an indigent and a contracted defense resource to provide defense-related services.

(d) If no county legal defender's office exists, the court shall select and assign an attorney or defense resource if:

(i) the contract for indigent legal services is with multiple attorneys or resources; or

(ii) the contract is with another attorney in the event of a conflict of interest.

(e) If the court considers the assignment of a noncontracting attorney or defense resource to provide legal services to an indigent defendant despite the existence of an indigent legal services contract and the court has a copy or notice

of the contract, before the court may make the assignment, it shall:

(i) set the matter for a hearing;

(ii) give proper notice of the hearing to the attorney of the responsible county or municipality; and

(iii) make findings that there is a compelling reason to appoint a noncontracting attorney or defense resource.

(f) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting attorney or defense resource.

(3) The court may make a determination of indigency at any time.

Amended by Chapter 49, 2006 General Session

Utah Code
Title 77 Utah Code of Criminal Procedure

77-32-303. Standard for court to appoint noncontracting attorney or defense resource -- Hearing.

If a county or municipality has contracted for, or otherwise made arrangements for, the legal defense of indigents, including a competent attorney and defense resources, the court may not appoint a noncontracting attorney or resource either under this part, Section **78B-1-151**, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

(1) conducts a hearing with proper notice to the responsible entity to consider the authorization or designation of a noncontract attorney or resource; and

(2) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney or resources for the indigent defendant.

Amended by Chapter 3, 2008 General Session.

Utah Code
Title 77 Utah Code of Criminal Procedure

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

...[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Rule 1.16. Declining or terminating representation.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

...(b)(6) the representation will result in an unreasonable financial burden on the lawyer or as been rendered unreasonably difficult by the client; ...

Rule 3.2. Expediting Litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. The standard is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 6.1. Voluntary Pro Bono Legal Service.

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

...(c) A lawyer may also discharge the responsibility to provide pro bono publico legal services by making an annual contribution of at least $10 per hour for each hour not provided under paragraph (a) or (b) above to an agency that provides direct services as defined in paragraph (a) above.

Rule 6.2. Accepting Appointments.

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

...(b) Representing the client is likely to result in an unreasonable financial burden on the lawyer; or

Excerpts from *Judicial Council Rules of Judicial Administration, Chapter 13, Rules of Professional Conduct*

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Rule 1.14. Client with Diminished Capacity.

...(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

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